

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4378 OF 2004

Smt.Ujwala Chandrakant Kapse ..Petitioner.
Versus
Smt. Manubai Devji Katkade & Ors. ..Respondents.

Mr. V.Z. Kantaria for the petitioner.
Ms. Smita Gaidhani for the respondents Nos. 2 to 8.
Mr. D.A.Patil, AGP for the respondent No.9.

CORAM : S. A. BOBDE, J.
DATED : 13TH OCTOBER, 2005.

P.C.:

1. Rule returnable forthwith. Ms. Gaidhani Advocate for the respondents Nos. 2 to 8 and Mr. Patil, AGP for the respondent No.9, appear and waive service of rule. Heard by consent.

2. The petitioner has challenged the order of the Divisional Commissioner, Nasik Division, Nasik in RTS Revision No.300/1998, dismissing her revision. The dispute pertains to mutation entry No.10044 made in favour of the petitioner. This entry was challenged by the respondent Manubai before the Sub Divisional Officer, who uphold the entry. The respondent-Manubai then carried the matter in appeal before the Additional Collector, who allowed her appeal and cancelled the mutation entry. The petitioner, therefore, preferred a revision before the learned

Divisional Commissioner, who has dismissed the revision by the impugned order dated 09.08.2001, which is under challenge.

3. The only contention raised on behalf of the petitioner is that the Divisional Commissioner has upheld the cancellation of the mutation entry despite the fact that the document i.e. the release deed dated 03.12.1994 was executed by the respondent Manubai in favour of the petitioner in regard to the land in question; though registered with the notary, has not been taken into account by the Divisional Commissioner on the ground that the said document was not duly registered with the Sub-Registrar. According to the learned counsel for the petitioner, the Review Authorities are not entitled to go into the question whether the document is duly registered in accordance with law. I see no merit in this contention raised on behalf of the petitioner in view of the decision of this court in Nalini w/o. Onkar Patil (Smt.) vs. Girdhar s/o Kashinath Patil & Ors, reported in 2002(2) Bom. C.R.287, in which it was held that the revenue authorities are not entitled to rely on the documents which are required to be compulsorily registered but have not been so registered.

4. Undisputedly, in the present case, the release deed claimed by the petitioner in her favour is in regard to the property which was valued for more than 100/-. The learned counsel for the respondent states that the respondent disputes the execution of the sale-deed itself. According to the learned counsel for the respondent, respondent -Manubai has not released the property in favour of the petitioner Ujwala.

5. In the circumstances of this case, therefore, it would be appropriate in the interest of justice if the said dispute between the parties is decided by the civil court. The civil court would naturally decide the same on its merit. The parties shall be at liberty to apply for mutation in accordance with the decision of the civil court.

6. No reason to interfere. Petition is dismissed with the above direction.

DT. 13.10.05

(S.A.BOBDE, J)

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